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March 29, 2013

Ex Parte Letter

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *In the Matter of Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations,* WC Docket No. 12-61

Dear Ms. Dortch:

Full Service Network LP ("Full Service Network" or "FSN") files this ex parte letter in response to a request for additional information from Jodie Donovan-May, Assistant Division Chief, Competition Policy Division, Wireline Competition Bureau. Full Service Network opposes the USTelecom Petition for Forbearance pursuant to 47 U.S.C. § 160(c) from enforcement of certain legacy telecommunications regulations ("Petition"), and in particular the Petition's request for forbearance from the Open Network Architecture ("ONA"), Comparably Efficient Interconnection ("CEI"), structural separations, and all-carrier requirements (Category 2).

FSN filed in opposition to the USTelecom petition,[1] emphasizing that USTelecom's Petition does not meet the statutory standard for forbearance from these requirements. The ONA, CEI, structural separations, and all-carrier requirements ("Category 2 Requirements") are necessary, as the Commission has found in the past, to ensure that enhanced services are

[1] *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations,* Opposition Of Full Service Network LP to USTelecom's Petition For Forbearance, WC Docket No. 12-61 (Apr. 9, 2012) ("FSN Opposition"). *See also Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations,* Reply Comments of Full Service Network LP, WC Docket No. 12-61 (Apr. 24, 2012).

provided on a nondiscriminatory basis, and removal of these requirements would be harmful to competition, consumers, and the public interest.

As explained in FSN's comments, the statute particularly discourages the use of the forbearance process in instances where failure to enforce regulations would have an adverse impact on competition. The Commission, in making the public interest determination in Section 160(a)(3), must "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."[2] As discussed further in FSN's Opposition and Reply Comments, the Petition cannot meet these criteria with respect to the Category 2 Requirements because the regulations in question were designed for the express purpose of encouraging competition, increasing consumer choice, and as a bulwark against unreasonable and discriminatory rates and services.

In addition, there is no record to support elimination of the Category 2 Requirements. The record evidence is limited to self-serving USTelecom statements that these and other regulatory requirements harm competition because they impose regulatory costs on incumbents. The Commission should therefore deny the Petition with respect to at least Category 2.

The Category 2 Requirements permit competitive carriers such as Full Service Network to purchase unbundled enhanced services elements from incumbent local exchange carriers ("ILECs") such that enhanced services such as voicemail and operator services can be offered in conjunction with competitive resold local exchange service. USTelecom and its ILEC members would like to eliminate the availability of these ancillary enhanced services because they know that resellers cannot compete in the local exchange market without them. If ILECs successfully eliminate the enhanced services, they will effectively eliminate resale competition. Of course, local exchange resale is one of the fundamental methods of competitive entry envisioned by the Telecom Act as evidenced by the resale obligations of Section 251.[3] As such, elimination of resale would not "promote competitive market conditions," nor "enhance competition among providers of telecommunications services."[4]

One of the most immediate adverse impacts which would result from the elimination of enhanced services would be the loss of voicemail's message waiting indicator (by light or staggered dial tone), which represents a critical input to voicemail services. The vast majority of customers will not purchase resold local exchange service if it does not include voicemail with this feature. Full Service Network resells approximately 10,000 lines in the Pittsburgh metro area, of which ***70-75% include voicemail services using message waiting indicator***. Eliminating unbundled enhanced services which resellers use to offer voicemail with resold local exchange service would have a devastating impact on local exchange resale competition, essentially eliminating resale as a means of competitive entry. There is no question that such

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[2] 47 U.S.C. § 160(b).
[3] *See, e.g.*, 47 U.S.C. §§ 251(b)(1), 251(c)(4).
[4] 47 U.S.C. § 160(b).

action by the Commission, which is not supported by any record evidence, would make it impossible for FSN to provide resold competitive local exchange service.

The elimination of other unbundled enhanced services would also make it impossible for resellers such as Full Service Network to provide operator services and directory assistance on a competitive basis, which again would have a severely negative impact on Full Service Network's ability to deliver competitive local exchange service.

Like voicemail, operator services and directory assistance are ancillary services customers expect to be delivered in conjunction with local exchange service. Full Service Network currently uses unbundled ONA software triggers to provide operator services and directory assistance. A "trigger" is the term for specific call-processing logic loaded in a network element (such as a switch) which implements a certain call routing. Triggers are required for a resellers to provide their own Operator Services and Directory Assistance rather than using the ILECS offering.

If Full Service Network could not offer operator services through the use of unbundled ONA triggers, FSN would immediately face a significant increase in its cost of services from the ILEC. In Pennsylvania, the avoided cost discount for resale "using the ILEC's Operator Services" is 18.34%, whereas the resale discount for "resellers choosing not to use the ILEC's Operator Services" is 22.00%.[5] If the Commission were to remove ONA unbundling tomorrow, there would be an immediate increase of approximately 4% in the cost of resale services to Pennsylvania resellers, and resellers would be forced to offer on a resale basis a service that was previously offered through unbundled trigger elements. This cost increase for resellers would go directly to the ILEC, and would immediately result in a significant price increase to Pennsylvania consumers purchasing services through resellers.

In addition to the direct revenue gained by the decrease in the resale discount, ILECs would also enjoy a revenue gain because the resellers would be forced to use the ILEC's operator services and directory assistance at the rates set by the ILEC. Resellers, and in turn their customers, would have no choice in matter, and the ILEC would become their *de facto* operator services provider. This shifting of revenue from competitors to ILECs and diminishment of customer choice would clearly be detrimental to both competition and the public interest.

Due to the availability of ONA software triggers enabling FSN to use the operator services and director assistance provider of its choosing, FSN has been able to secure Operator Services at a rate that is roughly 600% less than what the ILEC charges for the service.

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[5] *Wholesale Rate for Resale of Telecommunications Services Provided by Verizon Pennsylvania Telecommunications Services Provided by Verizon Pennsylvania Inc. and Verizon North Inc.*, Order, Pa. PUC Docket No..R-00038516 (Feb. 1, 2005), at ¶ 1.

Considering the loss of the resale discount and the massive increase in the cost of being forced to use the ILEC's service combined, resale as a vehicle for competition is significantly impaired by the removal of just this single unbundled enhanced service element. And in both areas the ILEC's gain translates into a direct loss for resellers and consumers alike. Again, there is no pro-competitive result from the elimination of unbundled ONA elements, but there are a variety of directly anticompetitive results from doing so. The Commission should therefore reject USTelecom's unsupported effort to eliminate Category 2 Requirements.

In summary, resale is one of the pillars of the Telecom Act, and has long been an effective alternative entry means to discipline the pricing of the incumbent. Eliminating the unbundled ONA services that are used by resellers such as FSN to provide ancillary but critically necessary services such as voicemail and operator services would eliminate resale as a viable entry vehicle with an immediate and direct impact on consumers in the form of increased prices and more limited availability of services. No carrier has put any evidence on the record since USTelecom filed its petition over a year ago on February 16, 2012 to provide factual support for the elimination of the Category 2 Requirements, and the Commission should therefore deny USTelecom's Petition for Forbearance on this issue.

As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/___________________
James C. Falvey
Counsel for Full Service Network LP